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RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Analytical compilation of the comments received in pursuance of paragraph 3 of Commission on Human Rights resolution 1990/45 on the rights of persons belonging to national, ethnic, religious and linguistic minorities

As of 1 February 1991, in addition to the comments contained in E/CN.4/1991/52, the Governments of the following States had also submitted their comments: Austria, Holy See, Italy and Malta.

As of the same date comments had also been received from a specialized agency: UNESCO.

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I. GENERAL COMMENTS

A. Austria

[18 January 1991]
[English]

1. Austria has consistently supported initiatives of standard setting in the field of human rights related to the protection of minorities because it considers it important to enable minorities to participate effectively in the affairs of the State in which they live rather than to marginalize them or deny their existence.

2. Ethnic groups or minorities are a cultural enrichment of States in which they live and constitute a valuable link between neighbouring States. They must be entitled to unhampered relations with the population of the same language or culture in other States. Minorities should have the right to be recognized as such as well as to the preservation, development and advancement of their ethnic and cultural identity. This right goes beyond mere protection against against discrimination. They also should have the right to organize themselves and to have an adequate percentage of public means.

3. Members of ethnic groups or minorities must be entitled to use their own language in private and in public, including the use of their language before public authorities which are specifically related to the area in which they live.

4. The definition of rights of ethnic groups calls for a continuous dialogue with their representatives. An understanding of questions concerning minorities or ethnic groups has to be promoted among the majority population.

5. Everyone should have the right to adhere freely to an ethnic group or minority. No member of an ethnic group or minority should encounter disadvantages of his exercise or non-exercise of the rights pertaining to him as a member of such a group.

6. It would therefore be an important enhancement of the protection of human rights within the framework of the United Nations if Member States could consider adopting principles of protection on minorities on a world-wide basis. In the opinion of the Austrian Government the draft declaration on the rights of persons belonging to national or ethnic, religious or linguistic minorities is a step in the right direction.

7. With reference to the text of the draft declaration as contained in document E/CN.4/1990/41, annex I, it would be important to include a definition of the term "minority". In spite of past difficulties in agreeing on a definition of this term, Austria proposes the following version:

> "The term minority means a group, traditionally living in a State, which is smaller in number than the rest of the population of a State, whose members, although nationals of that State, have ethnic, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language."

8. Austria will present specific comments on various parts of this draft declaration at the forthcoming second reading during the forty-seventh session of the Commission on Human Rights.

B. Holy See

[22 January 1991]
[French]

9. One substantive issue that is still outstanding and has not been tackled in the draft is the definition of the concept of minority. Are the rights in question possessed by the persons belonging to minorities or by the minorities themselves? The fact that the authors of the draft have used both approaches in the text - and that they are repeated side by side in almost all the articles except (surprisingly enough) in the title - suggests that the two concepts are different. In any case, it should be noted that article 27 of the International Covenant on Civil and Political Rights recognizes only certain rights of persons belonging to ethnic, religious or linguistic minorities (no mention being made of national minorities). The Holy See would point out that the existence of the rights of minorities, which are regarded as enjoying collectively rights is clearly asserted in the official teachings of the Church (see Pacem in Terris, Third Part; Gaudium et Spes, N. 73; Message for World Peace Day, 1989, N. 4-8).

C. Italy

[25 January 1991]
[French]

10. The draft declaration on the rights of persons belonging to national, ethnic, religious or linguistic minorities, prepared by the Working Group established by the Commission on Human Rights (E/CN.4/1990/41 of 5 March 1990) is, on the whole appropriate and balanced. However, the Government of Italy considers that the present text could be further improved.

11. Above all, the range of rights recognized should be extended. Useful terms of reference can be found in the document (fourth part) of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

12. In Italy's opinion minorities as such possess collective rights and persons belonging to those minorities enjoy individual rights. A way should therefore be found to make that distinction in the text of the declaration with a view, inter alia to future codification on the basis of the declaration. This applies above all to the title of the declaration, which at present mentions only the individual rights of persons belonging to minorities. The same is true of the preamble. Regarding the two options proposed for article 1, Italy prefers the wording in which "the minorities" are the subject; it has the same preference, mutatis mutandis, in the case of article 2.

D. Malta

[17 January 1991]
[English]

13. In compliance with the Secretary-General's invitation for the submission of comments to resolution 1990/45 and the draft declaration, the Permanent Mission of Malta wishes to state that Malta does not have any specific minorities to which the said declaration would apply. However, Malta has extensive human rights provisions both in its Constitution and in Act XIV of 1987. Furthermore, Section 45 of the Constitution of Malta, referring to discrimination, is a comprehensive section indeed and the rights being referred to in the draft declaration are substantially covered.

E. UNESCO

[17 January 1991]
[French]

14. In the context of UNESCO's activities in this area, steps are being taken to explore the possibility of drafting an instrument (declaration or recommendation) on the cultural rights of minorities to complement this draft declaration. A meeting on the cultural rights of peoples in Europe will be held in Gerona, Spain, from 5 to 8 February 1991 for this purpose.

II. COMMENTS ON THE PREAMBLE

[22 January 1991]
[French]

A. Holy See

15. On the positive side, it may be noted that the preamble emphasizes the importance of respect for human rights, contains a timely reminder of the worth of the human person and the equality of nations (second paragraph) and an unequivocal reference to religious freedom (art. 3 para. 1) and, on the whole, endeavours where possible to increase the protection of the minority groups which have often been the victims of abuses that have resulted in genocide.

16. Some reservations, however, are in order. First of all, there are a number of terminological inconsistencies: whereas resolution 1990/45 of the Commission on Human Rights refers to "national, ethnic, religious and linguistic minorities", the title of the draft speaks of "national or ethnic, religious or linguistic minorities"; whereas preambular paragraph 4 refers to "ethnic, religious or linguistic minorities", preambular paragraph 5 adds the adjective "national" between square brackets before "ethnic". This variation is repeated through the remainder of the text and gives the impression that the authors of the draft have not yet resolved the difficulties inherent in the definition of the concept of minority. These difficulties have plagued them from the beginning of their work several years ago and it would appear that failure to deal with them has not helped to improve the accuracy of the draft's present wording, especially since paragraph 2 of the above-mentioned resolution requests the United Nations Secretariat to ensure "uniformity of terminology".

17. Preambular paragraph 7 appears somewhat vague: the meaning of the statement that minorities "are within the constitutional framework" is not very clear and it is not obvious that "the constant promotion and realization of the rights of persons belonging to minorities" will contribute to the "strengthening of friendship and co-operation among peoples and States".

B. UNESCO

[17 January 1991]
[French]

18. In the third preambular paragraph, it would be useful to refer to the Convention against Discrimination in Education adopted by UNESCO's General Conference at its eleventh session in Paris, on 14 December 1960.

III. COMMENTS ON ARTICLE 2

A. Holy See

[22 January 1991]
[French]

19. The wording of article 2, paragraph 1, could give rise to problems of interpretation in respect of religious freedom; the word "propaganda" as used therein appears to encompass any activities that threaten the existence or the identity of minorities (according to the words in square brackets which increase the ambivalence and at the same time, make it more vague). The commendable intention of the authors to strengthen protection is understandable and appreciated but it is a source of concern that a Government might regard even the evangelizing activities of the Church as "propaganda". In that case, article 2, paragraph 2, would authorize the Government to combat such activities.

B. Malta

[17 January 1991]
[English]

20. Article 2, paragraph 1: Retention of the words in brackets, both after the word "instruments" and after the word "propaganda".

21. Article 2, paragraph 1 (ii): Retention of the first part of paragraph 1 (ii) but deletion of the words "or the development of their own characteristics".

22. Article 2, paragraph 2: Retention of the words in brackets "and in accordance with the relevant international treaties to which they are parties".

IV. COMMENTS ON ARTICLE 3

A. Holy See

[22 January 1991]
[French]

23. Although article 3, paragraph 2, provides for the right of minorities "to participate on an equitable basis in the cultural, religious, social, economic and political life in the country where they live", it gives the impression that it is referring to countries which have a "State religion"; however, to cite a specific example, what does participating "on an equitable basis" in the religious life of a country mean for a Christian minority living in an Islamic country? (The adverbial phrase is rather unclear in this context).

B. Malta

[17 January 1991]
[English]

24. Article 3, paragraph 3: Deletion of the words in brackets "This right shall be exercised in accordance with national legislation and relevant international human rights instruments".

V. COMMENTS ON ARTICLE 4

A. Malta

[17 January 1991]
[English]

25. Article 4, paragraph 3: Deletion of the words in brackets "as well as to develop further friendly relations and co-operation among States in accordance with the Charter of the United Nations".

26. Retention of the words in brackets "as well as to develop further international co-operation in the spirit of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations".

B. UNESCO

[17 January 1991]
[French]

27. Article 4: Mention should be made of the obligations deriving from article 13 of the International Covenant on Economic, Social and Cultural Rights.

VI. COMMENTS ON ARTICLE 5

A. Holy See

[22 January 1991]
[French]

28. Article 5, paragraph 2, appears superfluous and the reason for its inclusion is not very clear. Paragraph 3, on the contrary, reflects the concern of the countries which have large national minorities on their territory.

B. Italy

[25 January 1991]
[French]

29. A more comprehensive definition should be found for article 5, paragraph 1, in other words one that encompasses the process of the Conference on Security and Co-operation in Europe (CSCE) and the relevant documents that do not appear to be covered by the present definition, which refers only to "international treaties and agreements".

VII. COMMENTS ON ARTICLE 7

A. Italy

[25 January 1991]
[French]

30. Article 7 of the declaration refers to minorities with a territorial connotation, and it should be noted that a useful point of reference may be found in paragraph 36, subparagraph 2, of the Copenhagen document mentioned previously.

VIII. COMMENTS ON ARTICLE 8

A. Italy

[25 January 1991]
[French]

31. As regards the means of implementing the declaration, it may be pointed out that, on the one hand, the draft declaration fails to specify the functions of United Nations bodies (art. 8 of the draft) and, on the other, that it specifies, among the elements to be included a resolution accompanying the declaration (p. 14, para. (i)), the kinds of sensitizing activities to be undertaken by the Secretary-General as well as the monitoring to be carried out by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (p. 14, para. (ii)). The procedure laid down by Economic and Social Council resolution 1503 (XLVIII) concerning individual communications could, even if it was not explicitly mentioned, be included in article 8. It would be preferable, however, to include a specific reference to the possibility of submitting individual communications to initiate procedures for implementing the declaration.

IX. COMMENTS ON THE NEW ARTICLE

A. Italy

[25 January 1991]
[French]

32. The present wording of the new article of the draft declaration, the text of which is proposed on page 14 of document E/CN.4/1990/41, appears to weaken the declaration. Italy therefore suggests that it should either be strengthened or deleted.